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Mays Printing Company, Inc. and Local 2/289-M, Graphic Communications Conference, District Council 3, International Brotherhood of Teamsters. Cases 7–CA–51544 and 7–CA–52247

September 30, 2011

# REVISED SUPPLEMENTAL DECISION AND ORDER

# BY CHAIRMAN PEARCE AND MEMBERS BECKER AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.<sup>1</sup>

On May 29, 2009, the National Labor Relations Board issued an Order in Case 7–CA–51544 that, among other things, directed the Respondent to make its employees whole for any loss of earnings and other benefits, with interest, resulting from the Respondent's unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.<sup>2</sup> On November 2, 2009, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing in full the Board's Order.<sup>3</sup>

On July 1, 2010, the Board issued an Order in Case 7–CA–52247 that, among other things, directed the Respondent to make whole employee Jeffery A. Krejci for any loss of earnings and other benefits, with interest, resulting from the Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.<sup>4</sup>

A controversy having arisen over the amount of backpay due under the terms of the Board's Orders, the Regional Director for Region 7 issued a compliance specification and notice of hearing on June 11, 2010, alleging the amounts due under the Board's Orders, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated July 7, 2010, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by July 16, 2010, a motion for default judgment would be filed. To date, the Respondent has not filed an answer.

On July 26, 2010, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On July 27, 2010, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted. On August 5, 2010, the Board issued a Revised Notice to Show Cause why the motion should not be granted. The Respondent again filed no response.

On September 15, 2010, the Board issued a Supplemental Decision and Order granting the Motion for Default Judgment and ordering the Respondent to pay the amounts set forth in the compliance specification. Thereafter, on December 7, 2010, the Board issued an Order Revoking that Supplemental Decision and Order based on its determination that neither the Order Transferring Proceeding and Notice to Show Cause nor the Board's Supplemental Decision and Order had been served on the Respondent. On the same day, the Board issued a second revised Notice to Show Cause, indicating that responses were due on or before December 21, 2010.

On December 22, 2010, the Respondent filed a document entitled "Answer to Show Cause." On July 22, 2011, the Associate Executive Secretary of the Board issued a letter to the Respondent rejecting this document, indicating that it did not meet the Board's requirements either for a request for an extension of time to file a response, or for a request to accept a late filing because of excusable neglect. In light of the fact that the Respondent has failed to file an answer to the compliance specification or a timely response to the second revised Notice to Show Cause why the motion for default judgment should not be granted, the allegations in the motion and in the compliance specification are undisputed.

#### Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either

<sup>&</sup>lt;sup>1</sup> Although Case 7–CA–51544 was decided by only two Board members, the court's order and mandate upholding that decision became final prior to the Supreme Court's decision in *New Process Steel, L.P. v. NLRB*, 560 U.S. \_\_\_\_, 130 S.Ct. 2635 (2010), holding that a two-member group may not exercise delegated authority when the membership of the group falls below three. In these circumstances, we regard the matters finally resolved by the court of appeals as res judicata in this proceeding. See *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 374-78 (1940); *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986) (cited with approval in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S.\_\_\_, 130 S.Ct. 1367, 1377 (2010)).

<sup>&</sup>lt;sup>2</sup> 354 NLRB No. 23.

<sup>&</sup>lt;sup>3</sup> No. 09-2036.

<sup>&</sup>lt;sup>4</sup> Unpublished Order adopting, in the absence of exceptions, the decision of Administrative Law Judge Arthur J. Amchan issued on May 11, 2010 (JD-03-10).

<sup>&</sup>lt;sup>5</sup> 355 NLRB No. 179.

with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification, and we will order the Respondent to pay the amounts to the discriminatees, plus interest accrued to the date of payment.

### **ORDER**

The National Labor Relations Board orders that the Respondent, Mays Printing Company, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall, in Case 7–CA–51544, make whole Michael J. Camilleri, Paul N. Altese, Kenan F. Cross, Martin J. Griffin, Randolph S. Waller, and Jeffery A. Krejci by paying each of them the amount of backpay listed below, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:<sup>6</sup>

Michael J. Camilleri	\$ 8,719.81
Paul N. Altese	4,019.06
Kenan F. Cross	4,117.51
Martin J. Griffin	4,140.70
Randolph S. Waller	3,835.57

<sup>&</sup>lt;sup>6</sup> The Board has declined to apply its new policy, announced in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), of daily compounding of interest on backpay awards, in cases such as this, that were already in the compliance stage on the date that decision issued. *Rome Electrical Systems, Inc.*, 356 NLRB No. 38, slip op. at 1 fn. 2 (2010).

Jeffery A. Krejci <u>4,912.90</u> Backpay due in Case 7–CA–51544: \$29,745.55

The National Labor Relations Board orders that the Respondent, Mays Printing Company, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall, in Case 7–CA–52247, make whole discriminatee Jeffery A. Krejci by paying him the following amount, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, supra, minus tax withholdings required by Federal and State law: \$35,816.<sup>7</sup>

Backpay due in Case 7–CA–51544: \$29,745.55
Backpay due in Case 7–CA–52247: 35,816.00
TOTAL BACKPAY DUE: \$65,561.55

Dated, Washington, D.C. September 30, 2011

Mark Gaston Pearce,	Chairman
Craig Becker,	Member
Brian E. Hayes,	Member

## (SEAL) NATIONAL LABOR RELATIONS BOARD

As set forth in the compliance specification, discriminatee Krejci's backpay period is ongoing until he receives a valid offer of reinstatement; the backpay amount listed above has been calculated through June 11, 2010, in order to ascertain a definitive backpay period for purposes of this proceeding.